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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF ARIZONA**

13 Linda Conley; Heriberto Dominguez and  
14 Yoami Dominguez, husband and wife;  
15 Stephen Frakes; James C. Kemp and Reyna  
16 Kemp, husband and wife; Michelle Norris;  
17 William Ponce; and Herlan Yeomans and  
18 Eloina Yeomans, husband and wife,

19 Plaintiffs,

20 vs.

21 Town of Quartzsite, a political subdivision;  
22 Alex and John Doe Taft; Jeffrey and Jane  
23 Doe Gilbert; and Albert and Jane Doe  
24 Johnson,

25 Defendants.

19 No. 2:11-cv-01637-MEA

20 **PLAINTIFFS' SEPARATE  
21 STATEMENT OF FACTS IN SUPPORT  
22 OF THEIR MOTION FOR SUMMARY  
23 JUDGMENT ON §1983 CLAIM FOR  
24 FIRST AMENDMENT RETALIATION**

25 **(Oral Argument Requested)**

19 (Assigned to The Honorable Mark E. Aspey)

20 Pursuant to Rule 56, Fed.R.Civ.P., and Rule 56.1(a), L.R.Civ.P., Plaintiffs, through  
21 their undersigned counsel, hereby submit their separate statement of facts in support of their  
22 Motion for Summary Judgment on their §1983 Claim for First Amendment Retaliation.

23 **The DPS Investigation into Chief Gilbert**

24 1. Chief Gilbert is obligated, like every other officer, to report sick and  
25 vacation time taken off. *See* Section 5 of “Employment Renewal of Town Officer” dated  
2/8/2011 (Chief Gilbert’s contract), attached as Exhibit “A”; and pp. 25-37 of The Town of  
Quartzsite’s Personnel Policy, attached as Exhibit “B.”

1                   2.                   In May 2010 and at the request of former Mayor Ed Foster and a  
2 Council member, DPS opened a criminal “inquiry” into allegations that Chief Gilbert  
3 committed a criminal violation by not reporting sick and vacation time to the Town finance  
4 director and by improperly spending grant money. *See* DPS Criminal Investigation Report,  
5 DR #2010-026192, attached as Exhibit “C” (first 15 pages).

6                   3.                   During its investigation, DPS never interviewed Chief Gilbert,  
7 Town Manager Alexandra Taft, or any police officers (other than Ponce or Kemp) or finance  
8 department employees about the sick and vacation leave issue. *Id.*; *See also* 12/29/2011  
9 deposition of Det. Jason Henderson at 13-16, attached as Exhibit “D.”

10                  4.                   DPS never obtained any finance department records regarding sick  
11 and vacation time reported by the chief. Exhibit “C.”

12                  5.                   DPS never received or reviewed the Town’s personnel policy or the  
13 chief’s employment contract. *Id.*

14                  6.                   DPS stopped its investigation when the complainants could not  
15 identify a specific date a violation occurred and because it received second-hand (and  
16 erroneous) information the chief could take any amount of time off without reporting as long  
17 as the town manager approved it. *See* Exhibit “D” at 16, 19; 12/21/2011 deposition of Sgt.  
18 Jennifer Pinnow, at 21-22, attached as Exhibit “E”; and Exhibit “A.”

19                  7.                   DPS “concluded” its so-called investigation by stating it “did not  
20 discover any criminal violations committed by” Chief Gilbert. Exhibit “C.”

21                  8.                   DPS Det. Jason Henderson testified that there was nothing to  
22 investigate because he was not provided with specific dates or time periods when Chief Gilbert  
23 was alleged to be absent on vacation or sick time. Exhibit “D” at 16.

24                  9.                   According to Henderson, the majority of the DPS report was  
25 focused on an alleged misuse of grant funds – not on the sick and vacation time – because  
26 there was never really a true complaint filed regarding the sick and vacation time. *Id.* at 17-18.

1 **Chief Gilbert's Threatened Retaliation**

2 10. After the DPS investigation, Chief Gilbert obtained a copy of the  
3 DPS report and called a department meeting with the Town's police department. *See* 6/7/2012  
4 deposition of Chief Jeffrey Gilbert at 20-22, attached as Exhibit "F."

5 11. Even though Chief Gilbert knew (or at least should have known) the  
6 inadequacy of the investigation, he claimed DPS had exonerated him. *Id.* at 23; *See also*  
7 8/1/2012 deposition of Sgt William Ponce at 41-42, attached as Exhibit "G."

8 12. Chief Gilbert then threatened retaliation for any officers involved in  
9 the DPS investigation against him, stating he knew the names of the officers that participated  
10 and there would be "repercussions." Exhibit "G" at 42; See also Affidavit of William Ponce at  
11 ¶12, attached as Exhibit "O."

12 13. Chief Gilbert did not provide a copy of the DPS report that  
13 allegedly "exonerated" him to any of the officers. Exhibit "F" at 22; Exhibit "G" at 42.

14 14. The DPS report did not exonerate the Chief; rather, as Detective  
15 Henderson testified, "The investigation shows that there was never enough brought forth to  
16 even investigate [the sick and vacation time] matter fully." Exhibit "D" at 19.

17 15. Henderson's testimony is corroborated by Sgt Pinnow, who testified  
18 that DPS was not able to say one way or the other whether Chief Gilbert failed to report sick  
19 and vacation time he took because, "We just did not have enough facts to continue our  
20 investigation." Exhibit "E" at 20.

21 **The Officers Report Suspected the Suspected Ethical Violations to AZPOST**

22 16. In early May 2011, several officers gathered while off duty to draft  
23 a letter to AZPOST complaining about Chief Gilbert's conduct. *See* 8/3/2012 deposition of  
24 Lynn Norris at 49-52, attached as Exhibit "H."

1                   17.               The letter was a compilation of information and complaints from  
 2 Conley and nine police officers, including two who were never terminated. *Id.*; *See also*  
 3 7/30/2012 deposition of Linda Conley at 33-36, attached as Exhibit "I."

4                   18.               On May 11, 2011, Plaintiff Frakes, Plaintiff Kemp and Officer  
 5 Rodriguez and Officer Dominguez – while off duty – delivered the letter to AZPOST. *See*  
 6 3/2/2012 deposition of Felipe Rodriguez at 29, attached as Exhibit "J."

7                   19.               The officers prefaced their statements with words that proved to be  
 8 prophetic in anticipating the retaliation that later ensued. They wrote:

9                   We ...write this letter with great hesitation, and only after much discussion and  
 10 contemplation. We hesitate because we consider ourselves a team of  
 11 professional, dedicated, and educated individuals and it goes against our nature to  
 12 go against the Chief of Police. *We also hesitate because we fully believe that if*  
 13 *this letter does not have the desired result, and we continue to work under*  
 14 *administration, there will most certainly be retaliation.*

15                   See Letter to AZPOST at 1, attached as Exhibit "K" (emphasis added).

16                   20.               The AZPOST letter outlined more than a dozen improprieties that  
 17 Plaintiffs' believed had been committed by Chief Gilbert in his capacity as Chief of Police,  
 18 including claims that he engaged in selective enforcement, and ran license plates and/or  
 19 criminal histories on political adversaries and people who associated with political adversaries  
 20 or those he simply did not like. Exhibit "K"; Exhibit "O" at 13, 15.

21                   21.               Relevant to the terminations of Plaintiffs' employment was the  
 22 claim that Chief Gilbert did not properly report his use of sick and vacation time:

23                   Chief Gilbert accrues "sick" and "vacation" time but when he chooses to take  
 24 time off, which is a substantial amount of time, he doesn't report the time. He  
 25 never uses any of his "sick" or "vacation" time. He doesn't even complete a time  
 26 sheet, if he does complete one, it has only been recently.

Exhibit "K" at 2.

27                   22.               Plaintiffs sent a separate letter to the Mayor and Town Council  
 28 advising they "met with AZPOST to make a formal complaint against Police Chief Jeff

1 Gilbert.” *See* letter to “Mr. Mayor, Members of the Council, and citizens of Quartzsite,”  
 2 attached as Exhibit “L.”

3                   23.               In response to the complaints, the Town hired the Jackson Lewis  
 4 law firm to conduct an internal investigation into the allegations made against the chief. *See*  
 5 2/8/2012 deposition of Albert Johnson at 39-43, attached as Exhibit “M.”

6                   24.               Jackson Lewis issued a report to the Town on July 7, 2011. *Id.*

7 **The Town Investigates the Plaintiffs Who Reported the Chief’s Conduct**

8                   25.               On July 19, 2011, town manager Defendant Taft appointed assistant  
 9 town manager Defendant Johnson to act as personnel officer in the internal investigation of  
 10 Chief Gilbert. *See* 7/19/2011 Memorandum from Taft to Johnson, attached as Exhibit “N.”

11                  26.               On July 20, 2011, the very day after Johnson was appointed to  
 12 investigate Gilbert, Johnson served Notices of Investigation on the six Plaintiff officers and  
 13 three officers who have been reinstated; and Conley was served with a Notice of Intent to  
 14 Dismiss on July 19, 2011. *See* 7/20/2011 Notice of Investigation and Intent to Interview (the  
 15 officer), attached as Exhibit “P” and Notice of Intent to Dismiss (Conley) from Employment,  
 16 attached as Exhibit “Q.”

17                  27.               The Notices alleged a violation of Town policy by “[e]ngaging in  
 18 any conduct, on or off the job, that might bring discredit to the Town.” *Id.*

19                  28.               The sole factual basis in the Notices to support the suspensions was  
 20 the statement that Chief Gilbert failed to properly report sick and vacation time, with Johnson  
 21 claiming:

22                  “... you made an allegation against Chief Gilbert which you knew or had reason  
 23 to know was baseless given your knowledge of the existence of the prior DPS  
 investigation ....

24 *Id.*

25                  29.               Plaintiffs were suspended. *See* Exhibits “P” & “Q.”

1                   30.                 Shortly thereafter, Defendant Johnson issued a “Notice of Intent to  
2 Terminate Employment,” repeating the allegation that Plaintiffs made a knowingly false  
3 allegation against the chief. *See Exhibit “Q” as to Conley; and the Notices of Intent to*  
4 *Terminate Employment of each of the officers, attached collectively as Exhibit “R.”*

5                   31.                 The Notice served on Conley referenced the AZPOST letter, as well  
6 as an allegation she told the public the Town was under “Marshall Law.” Exhibit “Q.”

7                   32.                 The Town also served Amended Notices on some officers, alleging  
8 one or two other very minor allegations, each of which were merely a pretext for firing Plaintiffs.  
9 *See Amended Notices (collectively), attached as Exhibit “S.”*

10                  33.                 Following the notices and pre-termination hearings, Defendant  
11 Johnson terminated each of the Plaintiffs. *See Notices of Termination, attached collectively as*  
12 *Exhibit “T.”*

13 **Public Matter – Officers Report as Citizens**

14                  34.                 Plaintiffs presented their letter to AZPOST in their capacity as  
15 citizens. In their letter to AZPOST, Plaintiffs plainly stated they were doing “the right thing  
16 for the Town of Quartzsite, *its citizens*, and its employees.” Exhibit “K” at 1.

17                  35.                 The officers’ job duties obligate them to enforce the Town Code and  
18 state statutes within the jurisdictional limits of the Town of Quartzsite. Quartzsite Town Code  
19 Section 4-1-5(A), attached as Exhibit “U.”

20                  36.                 Plaintiffs’ job descriptions did not require they report their concerns  
21 about Chief Gilbert’s conduct to AZPOST, the mayor, or town council. Exhibit “O” at ¶19;  
22 *see also* Quartzsite Town Code Section 4-1-5, attached as Exhibit “U.”

23                  37.                 The officers did not present this complaint as part of a requested  
24 criminal investigation. Exhibit “O” at 17-19.

1                   38.               None of the ethical duties imposed by the officers' membership in  
2 AZPOST create any duty to report this suspected misconduct. *See AAC Section R13-5-101, et*  
3 *seq.*

4                   39.               Chief Gilbert admits the issue of whether he was abusing the public  
5 trust by taking sick and vacation time without properly reporting and accounting for it became  
6 "a matter of public interest." *See Testimony at Kemp's 1/4/2012 Personnel Advisory Board*  
7 *Hearing, Volume I, at 134, attached as Exhibit "V."*

8 **Basis of Johnson's Decision to Terminate Plaintiffs**

9                   40.               The reasons Johnson terminated the officers are for those reasons  
10 stated in the notices. Exhibit "M" at 130.

11                  41.               The sole basis for the Town's termination of Ponce was the  
12 allegation regarding the statement about Chief Gilbert's misuse of vacation and sick time.  
13 Exhibit "S" at Amended Notice of Investigation of Ponce.

14                  42.               The fact that the issues had gone public was not a factor in  
15 Johnson's decision to terminate the Plaintiffs, although he was not happy about it. Exhibit  
16 "M" at 153 & 162.

17                  43.               As to the Plaintiffs other than Ponce, the initial notices also  
18 referenced only the report of vacation and sick time as the reason for the adverse action.  
19 Exhibit "R."

20                  44.               Even though the Town later added other stated reasons for the  
21 adverse action against some of the other officers, it never waivered from its position that the  
22 report on sick and vacation time was a reason for terminations. Exhibit "S."

23                  45.               At the time he terminated Plaintiffs, Johnson was aware that the  
24 Town could not terminate or retaliate against an employee for engaging in protected speech.  
25 Exhibit "M" at 163-64.

1                   46.                   Johnson agrees Plaintiffs retain their rights as public citizens to  
2 complain about the things that citizens do. *Id.* at 167-68.

3                   47.                   Johnson did not feel this was a matter of infringing their right to  
4 free speech as he agrees everybody has the right to say what they want under the First  
5 Amendment because he believed the terminations were justified under the Town code. *Id.* at  
6 164.

7                   48.                   Johnson terminated Plaintiffs and “went after them collectively  
8 because they all signed [the AZPOST letter] ... they all authored it as far as we were  
9 concerned.” *Id.* at 142-43.

10                  49.                   Johnson’s biggest concern was the officers had been untruthful. He  
11 decided to terminate the Plaintiffs once he determined the statement regarding Gilbert’s misuse  
12 of sick and vacation time was false. *Id.* at 129-132.

13                  50.                   Johnson believed the statement about the chief’s misuse of  
14 reporting sick and vacation time was untruthful because he believed Gilbert was exempt from  
15 having to report his time taken off at all. *Id.* at 33, 93, 99, 101, 103, 109.

16                  51.                   Johnson does not know whether he would have terminated Plaintiffs  
17 if it turned out the allegations were true. Exhibit “M” at 165-66.

18                  52.                   Johnson did not try to assess whether there were different degrees of  
19 knowledge or culpability regarding the statement on the chief’s use of sick and vacation time,  
20 saying “The reason is because they were all at the same meeting.” *Id.* at 150.

21                  53.                   Johnson did not take into consideration who wrote what parts of the  
22 AZPOST letter, and was interested only in whether the officers knew about the 2010 DPS  
23 report and attended that meeting. *Id.* at 126-28.

24                  54.                   Although Johnson first claimed he made no attempt to distinguish  
25 level of culpability for making the statement regarding the chief’s misuse of reporting sick and  
26 vacation time, he later accepted back for employment Officers Ruvalcaba, Rodriguez, and

1 Villafana claiming the six terminated officers “were the ones that had the most to do with the  
 2 letter” and “the three that were reinstated were the ones that were just generally pissed off that  
 3 the situation had gotten as out of control as it had and that they had been led down the wrong  
 4 road, they had been misled...” *Id.* at 137, & 148-49.

5. Officers Rodriguez, Ruvalcaba, and Villafana were all involved in  
 6 authorship of parts of the AZPOST letter. Exhibit “J” at 17-23; *see also* 3/2/12 Deposition of  
 7 Alejandro Ruvalcaba at 8-14, attached as Exhibit “CC.”

8. Johnson did not terminate Officer Rodriguez because he felt  
 9 Rodriguez was “led down the path with these other officers,” didn’t know what he signed, and  
 10 didn’t see the completed document although he did not ask Rodriguez about his knowledge of  
 11 the specific statement regarding the chief’s use of sick and vacation time. Exhibit “M” at 137-  
 12 38.

13. Johnson did not fire Ruvalcaba because even though he knew of the  
 14 letter, Ruvalcaba claimed not to know the contents of the AZPOST letter, felt he had “very  
 15 little to do with the whole situation” and had come to the chief and said, “I don’t want any part  
 16 of this shit.” *Id.* at 140-41.

17. Johnson did no further investigation to determine whether  
 18 Ruvalcaba was being accurate when he said he did not know about the contents of the letter.  
 19 *Id.* at 142-43.

20. Johnson accepted Ruvalcaba’s statement he was not aware of the  
 21 complete contents of the letter but not the other officers’ similar representations because  
 22 Ruvalcaba came forward and he felt Ruvalcaba was taken advantage of. *Id.* at 143.

23. Villafana was not terminated for the same reasons. *Id.* at 147.

24. **Additional Charges Against Some of the Plaintiffs**

25. 61. As to officer Plaintiff Frakes, the Town included the following  
 26 additional allegations in its Amended Notice: absence without approved leave and falsification

1 of town records. Specifically, Frakes was charged with falsely completing a timecard and  
2 being absent without approved leave on May 11, 2011. Exhibit "S" at Amended Notice of  
3 Frakes.

4 62. Johnson claimed that on May 11, 2011 Frakes turned in a  
5 timecard that said he was working and in Phoenix. Johnson then corrects himself and says  
6 that Frakes reported "I was going to do a trade off. We do it all the time." Exhibit M at  
7 174. By that, he thought Frakes meant that he would put in extra hours. *Id.*

8                   63.                 This issue concerning Frakes was brought up by the Task Force  
9 which submitted a timecard to Gilbert at the very beginning when they were trying to  
10 figure out whether they needed to start an investigation or not, but was not included in the  
11 initial notice of investigation. *Id.* at 174.

12 64. Johnson admits that there were several remedies for this alleged  
13 violation by Frakes which could have included administrative leave or something in the  
14 personnel file. *Id.* at 175.

15 65. Johnson cannot say whether he would have terminated Frakes  
16 simply for the additional infraction claiming "I sort of hesitate to say what I could or could  
17 not do because I don't know exactly what they could or could not say under Brady." *Id.* at  
18 174-176.

19 66. As to officer Plaintiff Kemp, the Town included the following  
20 additional allegations in its Amended Notice: absence without approved leave and abusing  
21 sick leave privileges. Exhibit "S" at Amended Notice of Kemp.

67. Plaintiff Norris was also charged with falsely denying during her  
interview that she had written all or part of the four page AZPOST letter. The actual tape  
of the interview refutes this charge. *See* Transcript of Norris Pre-Termination Hearing  
attached as Exhibit "BB."

1                   68.                   Norris was also charged with not being at her home which was  
 2 her assigned place of duty during suspension. Specifically, Johnson testified that on  
 3 August 29 he picked up a message at 8:10 AM to call Michelle. He returned her call  
 4 several times between 8:30 and 11:08 but no one answered. There was no message.  
 5 Exhibit M at 171. Johnson then told the town attorney who suggested that he go down to  
 6 Norris' home. He and Sergeant Schultz went to Norris' house, but nobody was home. *Id.*  
 7 at 171. They then went next door to her parent's house and were told Shelly was in  
 8 Phoenix. *Id.* at 171. He later learned that she had a doctor's appointment. *Id.* at 171-72.  
 9 Shelly later called him at around 11:20 to tell him she was at the doctor. Johnson says  
 10 "She did not get prior approval, approval was, I think, the big issue." *Id.* at 172. He  
 11 characterized that action as malingering. *Id.* at 172. If you are sick you are required to  
 12 turn in sick pay. *Id.* at 172.

13                   69.                   Johnson also charged Norris with not being at her home on  
 14 August 12 where she was seen by a council person at a gas station. Jerry Lukkasson  
 15 allegedly called the town manager who then called Johnson. *Id.* at 173.

16                   70.                   Johnson does not know whether he would have fired Norris simply  
 17 for the two infractions of not being at her house which on administrative leave. *Id.* at 169-173.

18                   71.                   As to several of the Plaintiffs, Johnson admitted he didn't know  
 19 whether he would have disciplined them for those other reasons. Exhibit "M" at 169-77.

20                   72.                   If the only infraction was that Plaintiffs attended the court hearing  
 21 without permission, then Johnson would not terminate them. *Id.* at 133.

22 **The Extent of Johnson's Investigation**

23                   73.                   Prior to terminating plaintiffs, Johnson did not interview Gilbert,  
 24 anyone in the finance department, Dan Field, Detective Henderson, or Sergeant Pinnow as part  
 25 of his investigation. *Id.* at 98-100.

1                   74.                   Before firing Plaintiffs, Johnson never independently verified how  
2 much time Chief Gilbert took off in any given year. Exhibit "M" at 100-01 & 109.

3                   75.                   Before firing Plaintiffs, Johnson never even attempted to ascertain  
4 how much time off Gilbert reported to the finance department. Exhibit "M" at 100-01.

5                   76.                   Johnson did not believe Gilbert was obligated to report time off to  
6 the Finance department. *Id.* at 101.

7                   77.                   Before firing plaintiffs, Johnson did not try to investigate "how  
8 much time beyond an ordinary week [Gilbert] had worked", saying "I don't know that it was  
9 documented how much time he took off." *Id.* at 109.

10                  78.                   Johnson does not know how Taft could know how much time  
11 Gilbert worked beyond an ordinary work week, saying "I can't answer that question." *Id.* at  
12 106.

13                  79.                   Johnson does not know that Chief Gilbert did not abuse the  
14 privilege in reporting the amount of extra time he had taken off prior to the decision to  
15 terminate the employees; saying "Well, I don't know that the chief took that much time off. I  
16 think he took off – I think he took off a couple of weeks here and there over the course of  
17 several years." *Id.* at 108.

18                  80.                   Johnson agrees it is a true statement that Chief Gilbert accrues sick  
19 and vacation time and that he does take time off. *Id.* at 119

20                  81.                   Johnson does not know whether Gilbert took off a "substantial  
21 amount of time," or what that necessarily means. *Id.* at 119-120.

22                  82.                   As for the statement "he doesn't report the time," he denies it is a  
23 false statement; saying instead "we have been over this repeatedly. It is not required." *Id.* at  
24 120-21.

25                  83.                   Johnson does not know who wrote that portion of the AZPOST  
26 letter about the misuse of sick and vacation time, nor did he investigate or take into

1 consideration who wrote what parts of the AZPOST letter, and was interested only in whether  
 2 the officers knew about the 2010 DPS report and attended that meeting. *Id.* at 125-28.

3 **Disruption Alleged To Have Been Caused By the AZPOST Letter**

4 84. Johnson cannot say whether the fact the statement in the AZPOST  
 5 letter about Gilbert's misuse of sick and vacation time affected police operations. *Id.* at 157.

6 85. Gilbert never reported any problem with police operations to either  
 7 Johnson or Taft. Exhibit "M" at 14-17; 6/7/2012 deposition of Alex (Alexandra) Taft at 59,  
 8 attached as Exhibit "W."

9 86. When first asked how the letter "disrupted police operations," Gilbert  
 10 testified. "Well number one ... I had to be very careful as far as what my conversations were  
 11 with them." Exhibit "F" at 38.

12 87. When asked to describe what affect this speech had on the public  
 13 health, safety, and welfare, Gilbert said, "I think in general there was a preoccupation on  
 14 everybody's part, but I think the department was operating, you know." Exhibit "F" at 52-53.

15 88. Gilbert claims the letter created "tension between the officers" which  
 16 he later agreed was really a "collegiality" issue. Exhibit "V" at 115-17.

17 89. There was already "fractures" within the department as a result of the  
 18 2010 DPS investigation. Exhibit "V" at 47, 110-112.

19 90. There is no evidence the individual officers' job performance was  
 20 affected by making the complaint. Exhibit "J" at 37-40

21 91. Gilbert has no first hand knowledge any of the individual officers'  
 22 job performance was affected by the AZPOST letter stating "I didn't see them on a regular basis  
 23 .... So I really couldn't say on day to day." Exhibit "F" at 41.

24 92. Gilbert could not list a single specific instance for any of the plaintiffs  
 25 that showed their job performance was affected. Exhibit "F" at 42.

93. Gilbert speculates that some officers were only “doing their minimum job” was based on third-hand information he received from another supervisor “who believed” several officers were less productive because they were “busy talking about the problems.” Exhibit “F” at 39-41; Exhibit “V” at 117-120.

94. The only police procedure changed during this time was that Gilbert requested Sergeant Ponce to start recording start times for officers who worked on a county task force. Exhibit "F" at 45-47.

95. According to Gilbert, citizens were being disruptive at two meetings in June 2011 by talking loud, voicing their opinions, and speaking out of turn. Exhibit "F" at 79-85.

96. Acrimony at Quartzsite Town meetings is nothing new; as there are a number of known “troublemakers” (as Johnson and Taft refer to them) who have been disruptive at these meetings before to the point of being arrested. Exhibit “M” at 58-60; *See Testimony at Kemp’s 1/5/2012 Personnel Advisory Board Hearing (Day 2), Volume II, at 241, 259, attached as Exhibit “X.”*

97. Taft admits there were problems within the town council dating back to 2008 pointing to the fact there have been six (6) mayors since then. Exhibit "X" at 241, 259.

98. Defendants blame the officers by claiming these meetings would not have been so disruptive if Plaintiffs had filed an internal “grievance” as opposed to notifying AZPOST or the Mayor. Exhibit “V” at 63, 76-78,134-39, 199, 201; Exhibit “X” at 230-32; Exhibit “W” at 61-66.

99. The Town grievance procedure would have the officers taking their complaint to Gilbert first and then Taft, someone closely allied with Gilbert. Exhibit "B" at pp. 41-43.

1 100. Plaintiffs themselves never even spoke at the two town meetings.  
2 Exhibit "F" at 51; Exhibit "J" at 40-41; Exhibit "V" at 127, 130-32; and 3/2/2012 deposition of  
3 Vice Mayor Barbara Cowell at 29-31, attached as Exhibit "AA."

4 101. Taft doesn't even recall anyone talking about the officers or their  
5 complaints at the town meetings in June 2011. Exhibit "X" at 242-43.

6 102. The only "fact" Defendants can cite to is that some citizens were  
7 wearing t-shirts and hats showing support for the officers. Exhibit "V" at 121-22; Exhibit "X" at  
8 229-30.

9 103. Taft admits there were several known troublemakers who "usually"  
10 caused trouble and complained." Exhibit "X" at 241.

11 104. The "chaos at one meeting was created predominately" by a Town  
12 citizen, Mike Roth, not the Plaintiffs. Exhibit "V" at 140; Exhibit "X" at 238.

13 105. Roth and Jones were not arrested because of anything related to the  
14 officers' complaints. Exhibit "M" at 48.

15 **Gilbert's Reporting Obligations**

16 106. The chief's contract pertaining to sick and vacation time states:  
17 The position of police chief is an appointed position and is therefore exempted  
18 from the fair labor standards act and the accrual of overtime and compensatory.  
19 However, the town recognizes that the [chief] must devote additional time  
20 outside of normal office hours to conduct town business. *As a result, there may  
be times that [the chief] as an unclassified employee takes informal time off  
without the necessity of reporting such time to payroll* after notifying the Town  
Manager of his intentions to do so.

21 All other provisions relating to vacation, sick leave, retirement contributions,  
22 holidays and other fringe benefits and working conditions as they now exist, or  
23 hereafter may be amended, also shall apply to the [chief] as they do to other  
employees of the town, including the accrual of vacation and sick leave and  
payment thereof upon termination of employment.

24 Exhibit "A" at 3.

25 107. Under this agreement, the chief accrues sick and vacation time and  
26 has the same obligation to report sick and vacation time taken. *Id.*

1                   108.           Sick and vacation time earned and taken must be accurately  
2 documented because accumulated time can be cashed in. Exhibit "X" at 244-46.

3                   109.           Sick time, which is not vested, is cashed out annually; while  
4 vacation time is a vested right that accrues up to a certain limit. *Id.*

5                   110.           Gilbert will be paid for unused vacation time when his employment  
6 ends. *Id.* at 248.

7                   111.           The formal process is that the individual submits a written leave  
8 request form to their supervisor. Exhibit "F" at 57-58.

9                   112.           If the supervisor approves the time off, the leave request form is  
10 taken to the finance department, which properly records the time on payroll. *Id.* at 58.

11                  113.           Falsely reporting sick or vacation time is a dischargeable offense.  
12 Exhibit "S" at Amended Notice re Kemp; Exhibit "V" at 195-96.

13                  114.           Johnson believes that Gilbert has absolutely no duty to report any  
14 amount of time taken off to the finance department because he is an "exempt" employee.  
15 Exhibit "V" at 208.

16                  115.           Gilbert and Taft interpret Gilbert's contract to mean that if Gilbert  
17 works any amount of time beyond 40 hours in a given week, then – with the permission of Taft –  
18 Gilbert can take off a similar amount of time without reporting it and having it deducted from  
19 sick or vacation time. Exhibit "F" at 57-60; Exhibit "V" at 91-96; Exhibit "W" at 16-20; Exhibit  
20 "X" at 243-48.

21                  116.           Procedurally, Gilbert would contact Taft and tell her he wanted to  
22 take time off without reporting it. Exhibit "F" at 58-60.

23                  117.           Taft believed the decision whether to approve the request was  
24 totally in her discretion and, as long as she approved it, the time does not need to be reported to  
25 finance. Exhibit "W" at 26, 35.

1 118. Taft works in a different building than Gilbert, but claims to know  
2 how many hours Chief Gilbert works in any given week. Exhibit "W" at 59.

3 119. Former Town Manager Dan Field disagrees with both of these  
4 interpretations, saying that Gilbert was obligated to report any time taken off, and only in an  
5 exceptional circumstance, would he as town manager think of telling Gilbert to take time off and  
6 not report it. In other words, he expressly rejected Taft and Gilbert's interpretation. See  
7 6/20/2012 deposition of Daniel Field at 13-16, attached as Exhibit "Y."

8 120. Field testified that not reporting "informal time off" was truly  
9 reserved for exceptional circumstances; for example, if someone worked through the evening,  
10 he might tell that person to take a day off. *Id.* at 15.

11 121. The informal time off was not to be used on any consistent basis,  
12 nor to compensate the chief for working more than 40 hours a week, since that was expected  
13 given his position as a salaried employee. *Id.* at 13-16.

14 122. A salaried employee like Gilbert is expected to work until he gets  
15 the job done, whatever that amount of time may be. *Id.* at 10.

16 **Time Taken Off By Gilbert**

17 123. Gilbert does not punch a clock or otherwise document the number  
18 of hours he works. Exhibit "M" at 91-93.

19 124. There are no records that document how many hours Gilbert worked  
20 on a given week. Exhibit "F" at 61; Exhibit "W" at 21-22.

21 125. Both Gilbert and Taft agree that Gilbert has taken "informal time"  
22 off, at least to some degree. Exhibit "F" at 60-61; Exhibit "W" at 22-25.

23 126. Gilbert recalled only one instance where Taft approved informal time  
24 off. Exhibit "F" at 61;

25 127. Taft could not even give an estimate of how much informal time off  
26 she has granted Gilbert. Exhibit "W" at 22-23.

128. There are no records which document how much informal time off  
2 Gilbert has taken. Exhibit "F" at 61; Exhibit "W" at 21-22.

**Dan Field's Observations of Time Taken Off By Gilbert**

129. Gilbert has been Quartzsite's chief of police since 2005-06.  
5 Exhibit "V" at 43; Exhibit "F" at 5.

130. Field was the town manager from the time Gilbert started in  
7 2005-06 until 2009. *See* 6/20/12 Deposition of Daniel Field, at 5-7, attached as Exhibit  
8 "Y."

131. Field saw Gilbert take off large amounts of time. Exhibit "Y" at 13-  
10 21.

132. Field assumed the chief was submitting some type of written leave  
12 request for time he was taking off. *Id.* at 13-14.

133. Field received a number of complaints about the chief not being  
14 available, including complaints from council member and police officers, which Field  
15 mentioned to the chief. *Id.* at 13-21.

134. Field knew the chief would take weeks off at a time to drive his  
17 wife to Florida or travel to Kentucky and visit family. *Id.* at 12-21.

**Plaintiff Ponce Observations of Time Gilbert Has Taken Off**

135. Plaintiff Ponce observed the chief taking significant periods of time  
20 off, including frequently taking 2-3 days at a time, full weeks when he traveled to Florida or  
21 Kentucky, and at least a month in Florida. Exhibit "O" at 7.

136. On several occasions, Ponce fielded calls from council members,  
23 the town manager, and former town manager, complaining they could not locate the chief. *Id.*  
24 at 9-10.

137. More than six times, the finance department asked Ponce to obtain  
26 leave request forms from the chief when they knew he'd taken time off. *Id.* at 6.

138. Gilbert told Ponce not to worry and that he would take care of it.

2 *Id.*

3 139. When Ponce told the finance department employees, they just  
4 shook their heads. *Id.*

5 140. Several times, former finance employees told Ponce that the chief  
6 took time off without submitting a leave request form. *Id.* at 5.

7 141. The finance employees expressed concern over this because of  
8 possible audits, and said that the chief yelled at them if they asked him to submit forms. *Id.*

9 **Leave Request Forms on File for Gilbert**

10 142. Defendants have not produced any leave request forms for any  
11 time taken in 2006 and Gilbert did not identify any time reported time off from his payroll  
12 records. *See* Defendants' First Supplemental Response to Plaintiffs' Request for  
13 Production, Response to Document Request No. 5, attached as Exhibit "Z"; Exhibit "F" at  
14 63-67.

15 143. There are no leave request forms for any time taken in 2007 and  
16 Gilbert did not identify any reported time off from his payroll records. Exhibit "Z";  
17 Exhibit "F" at 63-67.

18 144. In August 2008, one leave request form was submitted for 40  
19 hours, but was not approved by Alex Taft until August 2009. Exhibit "Z."

20 145. In May 2009, 80 hours were reported and in August-September  
21 2009, Alex Taft approved 40 hours of non-reportable time. Exhibit "Z."

22 146. In July 2009, 12 hours were reported. Exhibit "Z."

23 147. In 2010, one leave request form seeking 16 hours of time off was  
24 reported. Exhibit "Z."

25 148. Gilbert's payroll records for 2010 show additional time being  
26 deducted, but no leave request forms were submitted. Exhibit "Z"; Exhibit "F" at 63-67.

1 149. In 2011, up to the time of the officers' letter, Gilbert reported 24  
2 hours of time off. Exhibit "Z."

3 Dated this 28<sup>th</sup> day of September, 2012.

4 SCHNEIDER & ONOFRY, P.C.  
5

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I hereby certify that on September 28, 2012, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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